

REMARKS

Claims 1-21 are pending in the present application. By this Amendment, previously presented claims 1, 4-5 and 17 have been amended. Applicant respectfully requests reconsideration of the present claims in view of the foregoing amendments and the following remarks.

I. Formal Matters:

Election of Species Requirement

Applicants note that the requirement for an election of species has been made final in the April 09, 2010 Office Action.

Claim Objection

As shown above, Applicants have amended previously presented claim 17 to overcome the claim objection in the April 09, 2010 Office Action.

II. Prior Art Rejection:

Rejection of Claims 1-3, 6-13, 15-16 and 18-20 Under 35 U.S.C. §102(b) In View Of International Patent Application Publication No. WO2002/067682 (Haesslin et al.)

Previously presented claims 1-3, 6-13, 15-16 and 18-20 were rejected under 35 U.S.C. §102(b) as being anticipated by International Patent Application Publication No. WO2002/067682 to Haesslin et al. (hereinafter, "Haesslin"). This rejection is respectfully traversed.

In order for the disclosure of Haesslin to anticipate Applicants' claimed invention as embodied in independent claim 1, the disclosure of Haesslin must disclose each and every claim feature recited in independent claim 1. See, for example, *Finnigan Corp. v. International Trade Commission*, 180 F.3d 1354, 1365, 51 USPQ2d 1001, 1009 (Fed. Cir. 1999), in which the Court stated "In order to establish anticipation, a prior art reference must disclose every feature of the claimed invention."

The disclosure of Haesslin fails to disclose at least the following claim feature recited in previously presented independent claim 1: an emulsifiable concentrate comprising 5 to

80 % by weight of at least one oil adjuvant, wherein the oil adjuvant comprises (i) a vegetable oil, (ii) an animal oil, (iii) a mineral oil, (iv) an alkyl ester of a vegetable, an animal or a mineral oil, or (v) a mixture of any of (i) to (iv); and wherein the emulsifiable concentrate contains less than 2.5 % water.

Accordingly, the disclosure of Haesslin cannot anticipate Applicants' claimed invention as embodied in independent claim 1. Since claims 2-3, 6-13, 15-16 and 18-20 depend from independent claim 1 and recite additional claim features, the disclosure of Haesslin cannot anticipate Applicants' claimed invention as embodied in dependent claims 2-3, 6-13, 15-16 and 18-20.

Applicants note that the comparative emulsifiable concentrate EC100 disclosed on page 23 of Haesslin does not comprise an oil adjuvant comprising (i) a vegetable oil, (ii) an animal oil, (iii) a mineral oil, (iv) an alkyl ester of a vegetable, an animal or a mineral oil, or (v) a mixture of any of (i) to (iv) as recited in independent claim 1. Each of the disclosed castor oil polyglycol 36-37 surfactant and the epoxidised soybean oil dispersing agent in the comparative EC100 concentrate is not (i) a vegetable oil, (ii) an animal oil, (iii) a mineral oil, or (iv) an alkyl ester of a vegetable, an animal or a mineral oil as recited in Applicants' independent claim 1.

Applicants further note that the remaining disclosure of Haesslin is directed to herbicidal compositions comprising an oil phase emulsified with an aqueous phase with the overall herbicidal composition typically containing from about 26 to 61 weight percent water, based on a total weight of a given herbicidal composition. See, for example, the Preparation Examples on pages 13-18 of Haesslin.

For at least the reasons given above, the disclosure of Haesslin fails to anticipate Applicants' claimed invention as embodied in claims 1-3, 6-13, 15-16 and 18-20. Accordingly, Applicants respectfully request withdrawal of this rejection.

Rejection of Claims 1-21 Under 35 U.S.C. §103(a) In View Of Haesslin In Combination With U.S. Patent No. 7,314,848 (Killick et al.) and U.S. Patent Application Publication No. 2005/0043182 (Douglass et al.)

Claims 1-21 were rejected under 35 U.S.C. §103(a) as being unpatentable in view of Haesslin further in view of U.S. Patent No. 7,314,848 issued to Killick et al. (hereinafter,

“Killick”) and U.S. Patent Application Publication No. 2005/0043182 to Douglass et al. (hereinafter, “Douglass”). This rejection is respectfully traversed.

As noted above, the teaching of Haesslin is directed to herbicidal compositions comprising an oil phase emulsified with an aqueous phase with the overall herbicidal composition typically containing from about 26 to 61 weight percent water, based on a total weight of a given herbicidal composition. The teaching of Haesslin does disclose comparative emulsifiable concentrate EC100 on page 23; however, it is clear from data in Table B1 on page 23 that the teaching of Haesslin directs one skilled in the art to utilize the herbicidal compositions of Haesslin (i.e., herbicidal compositions comprising an oil phase emulsified with an aqueous phase with the overall herbicidal composition typically containing from about 26 to 61 weight percent water, based on a total weight of a given herbicidal composition), not comparative emulsifiable concentrate EC100. In other words, the teaching of Haesslin specifically teaches away from comparative emulsifiable concentrate EC100.

The teaching of Killick is directed to specific adjuvant compositions for use in herbicidal compositions. The disclosed adjuvant compositions comprise one or more lipophilic solvents, one or more plant nutrients, and one or more cationic emulsifiers. All of the disclosed adjuvant compositions appear to contain water as (i) a component of the one or more plant nutrients or (ii) an added component. See, for example, the exemplary adjuvant compositions in Examples.

The teaching of Douglass is directed to microemulsifiable hydrophobic agrochemical concentrates comprising a combination of (A) an alkyl alkanoate, (B) a polyhydric alcohol, a polyhydric alcohol condensate, or a mixture thereof, and (C) at least one surfactant.

The April 09, 2010 Office Action suggests that one skilled in the art, given the teaching of Haesslin, would have (1) sought out the teachings of Killick and Douglass, and (2) modified the disclosed herbicidal compositions of Haesslin by (i) incorporating the adjuvant composition of Killick and (ii) one or more co-herbicides of Douglass into the disclosed herbicidal compositions of Haesslin.

Although it is not clear to Applicants why one skilled in the art would have been motivated to modify the disclosed herbicidal compositions of Haesslin as suggested in the April

09, 2010 Office Action given the clear, complete teaching in Haesslin regarding composition components, Applicants respectfully submit that even if the disclosed herbicidal compositions of Haesslin were modified as suggested in the April 09, 2010 Office Action, the resulting herbicidal composition would still fail to make obvious Applicants' claimed emulsifiable concentrate given that the resulting herbicidal compositions would still comprise greater than 2.5 % water.

Applicants respectfully submit that the teaching of Haesslin, the teaching of Killick, the teaching of Douglass, and the general state of the art all fail to recognize the negative impact of water on emulsifiable concentrates comprising the specific components as recited in Applicants' independent claim 1. As shown in Table 1 on page 15 of Applicants' original specification, the water content of a given emulsifiable concentrate strongly influences the chemical stability of the active ingredients (e.g., clodinafop-propargyl and cloquintocet-mexyl) within a given emulsifiable concentrate during storage. Applicants' Table 1 shows that the optimum chemical stability of the active ingredients (e.g., clodinafop-propargyl and cloquintocet-mexyl) is observed when the water content of a given emulsifiable concentrate is maintained below about 3%.

Applicants respectfully submit that one skilled in the art, given the teaching of Haesslin, alone or in combination with the teaching of Killick, the teaching of Douglass, and the general state of the art, would have utilized as much as 61 weight percent water without realizing the negative impact of water on clodinafop-propargyl and cloquintocet-mexyl in the resulting herbicidal compositions. In addition, Applicants respectfully submit that the teaching of Haesslin, as well as any combination of the teaching of Haesslin with the teaching of Killick, the teaching of Douglass, and the general state of the art, specifically teaches away from Applicants' claimed emulsifiable concentrates as recited in Applicants' independent claim 1 given that Applicants' claimed emulsifiable concentrates contain less than 2.5 % water, and the teaching of Haesslin, alone or in combination with the teaching of Killick, the teaching of Douglass, and the general state of the art, instructs one skilled in the art to use as much as 61 weight percent water. For at least this reason, the teaching of Haesslin in combination with the teaching of Killick, the teaching of Douglass, and the general state of the art fails to make obvious Applicants' claimed emulsifiable concentrates as recited in Applicants' independent claim 1.

For at least the reasons given above, the proposed combination of the teaching of Haesslin with the teaching of Killick and the teaching of Douglass fails to make obvious Applicants' claimed invention as recited in independent claim 1. Since claims 2-21 depend from independent claim 1 and recite additional claim features, the proposed combination of the teaching of Haesslin with the teaching of Killick and the teaching of Douglass also fails to make obvious Applicants' claimed invention as recited in claims 2-21. Accordingly, withdrawal of this rejection is respectfully requested.

III. Conclusion:

For at least the reasons given above, Applicants submit that claims 1-21 define patentable subject matter. Accordingly, Applicants respectfully request allowance of these claims.

Should Examiner Arnold believe that further action is necessary to place the application in better condition for allowance, Examiner Arnold is respectfully requested to contact Applicants' representative at the telephone number listed below.

No additional fees are believed due; however, the Commissioner is hereby authorized to charge any deficiency, or credit any overpayment, to Deposit Account No. 503025.

Respectfully submitted,

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